

# DOE RUN

CQ638

NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

September 17, 2002

Dear Task Force Members:

The Doe Run Company, headquartered in St. Louis Missouri, is the largest primary lead producer in the United States accounting for approximately 80% of domestic production. The majority of this production is sourced from leases of federally owned lands located in the Mark Twain National Forest of Southern Missouri. Doe Run, and its predecessors, has successfully operated in the national forest for over 40 years paying in excess of 150 million dollars in royalties to the federal government. We have operated with NEPA projects since the legislation was made into law.

NEPA regulations have been modified many times over this period with each modification requiring more data and thus compounding the documentation of each successive NEPA decision. Categorical exclusions are no longer allowed on mineral exploration activities. Correspondingly, the documentation for environmental impact statements and environmental analysis has gone from a few pages to a few hundred pages. The increased documentation has increased the time required to complete NEPA projects from months to several years. Please find enclosed the NEPA actions by the Forest Service and BLM on seven prospecting permit applications made on the Mark Twain National Forest as examples of the time required to make NEPA decisions. After reviewing this information it will become clear why changes are needed in the NEPA process. The effort undertaken by the Task Force to analyze needed documentation and improve the process is commendable. We offer these comments to assist the effort.

**Federal and Inter-government Collaboration:** We are most familiar with the relationship between the BLM and Forest Service for NEPA document preparation. These agencies work in tandem to develop the document, but each agency must prepare a separate decision and each must allow decision appeals separately. This means that the same action has a separate decision document from the Forest Service and BLM, and that each decision can be appealed separately. Under the current regulations this process adds a "double jeopardy" element to the process that is unnecessary, adds cost to both the government agencies and the applicant and adds years to the processing time. We believe that it is appropriate for the Forest Service and BLM to make one decision on the surface and subsurface impacts of mineral development actions and use one appeal system for those decisions.

**Categorical Exclusions:** The agencies are reluctant to use Categorical Exclusions for Documentation on the simplest decisions because they believe that this action is not defensible in court. They are convinced that to prevail in court the action requires more documentation and that all possibilities must be analyzed. An example is the process used to analyze mineral exploration on the Mark Twain National Forest since 1992. There is a portion of the Forest that

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has been explored and mined for over 40 years. This area is a world-class mining district called the Viburnum Trend, where approximately fifty per cent of the district is situated on public lands. Mineral exploration activities have been conducted on a routine basis in this area since 1952. Several case history studies have proven these activities to be a temporary impact on the forest that can be fully mitigated. For many years prior to 1992, the USFS treated exploration activities conducted under prospecting permits as subject to Categorical Exclusions for purposes of NEPA compliance. In 1992 the USFS amended wording to its manual to limit Categorical Exclusions to short-term (one year or less) mineral, energy or geophysical investigations and their incidental support activities. These changes were made without public review or consultation with the mining industry. The result of these changes has been to significantly slow the process to permit exploration activities through the USFS administered lands. We propose that CEQ work with the Forest Service and BLM to allow mineral exploration as an exclusion from NEPA documentation regardless of the duration of exploration. Under the current policy, investment by the private sector has been greatly reduced and resulting mineral discoveries, and royalties from those discoveries, have not benefited the government.

**Additional Areas for Consideration:** One of the biggest problems with NEPA decisions is the time it takes the Agencies to complete the document and make a decision. In most cases this takes years and the outcome is uncertain throughout the process. The NEPA process needs to be streamlined and the documents required for the analysis (whether the decision document is an EIS, EA, or CE) clearly identified. The evolution of NEPA documentation has placed more and more information in the documents and increased analysis time substantially. The process needs to be simplified and developed in such a way that the government will prevail in court and be able to process decisions more quickly. The detail of analysis needs to be better defined and supported by CEQ.

Thank you for the opportunity to comment on the NEPA process. It is our hopes that the process can be streamlined to improve the efficiency of the handling and approving the permits for mineral actions on the Mark Twain National Forest.

Sincerely,



Donald R. Taylor  
Exploration Manager and Chief Geologist  
The Doe Run Company

Enclosure

Doc Run Prospecting Permit Applications  
Forest Service and BLM Decision and Appeal Process

Progress report on the seven prospecting permit applications submitted by Doe Run to the BLM/US Forest Service will go through this process.

**Forest Service Actions**

- 1) Doe Run Makes application in 1996
- 2) Several meetings occur between Doe Run and Forest Service regarding processing these permits with NEPA Categorical Exclusions. Meetings occur in 1997 and 1998. Forest Service indicates that CE's do not apply to these actions. Doe Run ask for reconsideration of regulations passed in 1996 that does not allow consideration of CE's for mineral exploration with a duration of longer than a year.
- 3) Forest Service makes several attempts to revise the NEPA regulations for mineral exploration but none are approved by CEQ.
- 4) Doe Run ask the Forest Service to process applications---8/2000
- 5) NEPA Scoping begins-----8/2001
- 6) EA Issued for Comments -----10/18/2001
- 7) Comment Period Ends-----11/21/01
- 8) NEPA Final Decision-----2/14/02
- 9) Decision Appeal Period Ends-----4/8/02
- 10) Two Appeals of Decision Filed-----4/8/02
- 11) Interested Party Status requested by Doe Run-----4/9/02
- 12) Interested Party Comments Provided-----4/22/02
- 13) Deciding Officer Supports Decision on Appeal-----5/23/02
- 14) Regional Forester issue consent letter to BLM-----9/9/02

**BLM Actions**

- 1) NEPA Decision
- 2) 30 Day Comment Period
- 3) Comment Review
- 4) Decision to Issue Permits
- 5) 30 Appeal Period
- 6) Appeals to Interior Board of Land Appeals
- 7) Doe Run Requests Affected Party Status
- 8) Doe Run Requests Expedited Appeal Decision
- 9) Doe Run Offers Affected Party Comments
- 10) IBLA Issues Decision of Appeals
- 11) Litigation Possible
- 12) Permits Issued after Litigation Settled

